

O'CONNOR & MANGAN, P.C.

J. KENNETH O'CONNOR*
J. WARREN MANGAN

271 NORTH AVENUE, SUITE 206
NEW ROCHELLE, NEW YORK 10801
(914) 576-7630
Fax No. (914) 576-7682

Deceased February 16, 2016

1-DUL.20085

May 21, 2020

VIA ECF

The Honorable Judge Joan M. Azrack
U.S. District Court - EDNY
100 Federal Plaza
Central Islip, New York 11722

Re: Tatiana Herdocia, et al. v. Southern Glazer's Wine &
Spirits of NY, LLC, et al.
Case No. 18-cv-05284 (JMA)(ARL)
Pre-Motion Conference Letter

Dear Judge Azrack:

This will serve as Defendant Wine, Liquor & Distillery Workers Union Local 1-D's ("Union") pre-motion conference request pursuant to the Courts Individual Rule IV.B. Union seeks to file a motion for dismissal under Fed. R. Civ. P. 12(b)(6). The following sets forth the bases for the motion.

Plaintiffs previously sued Union. See Case No. 14-cv-03196-JMA-ARL ("Herdocia I"). That case was voluntarily dismissed *with prejudice* after the close of discovery and with a motion for summary judgment pending. Counsel for all parties executed the Stipulation Of Dismissal. The Court ordered Herdocia I dismissed with prejudice on May 22, 2017. The Complaint in Herdocia I alleged:

- (i) Violations of the Equal Pay Act, due to "sex-based differential pay practices";
- (ii) State law (NYSHRL) sex discrimination due to use of "sex as a determining factor for pay"; and
- (iii) State Labor Law Section 194 violations for "sex-based differential pay practices".

On or about July 26, 2017, Plaintiffs filed discrimination complaints with the EEOC alleging the same acts that were alleged in Herdocia I and claiming discrimination on the basis of sex and retaliation. On or about July 2, 2018, Plaintiffs received a right to sue letter from EEOC. On September 20, 2018, Plaintiffs filed this action alleging violations of Title VII and NYS Human Rights Law—failure to promote; unequal terms and conditions of employment and retaliation (“Herdocia II”). On May 11, 2020, Plaintiffs filed their Amended Complaint in Herdocia II for employment discrimination retaliation.

In this Circuit, Herdocia II is barred by the doctrine of *res judicata*. A voluntary dismissal, with prejudice, is “deemed a final adjudication on the merits for *res judicata* purposes on the claims asserted or which could have been asserted [in Herdocia I].” *Israel v. Carpenter*, 120 F.3d 361, 365 (2d Cir. 1997). These successive lawsuits arise out of a measure of identity of the same allegations and involve the alleged infringement of the same sex-based rights. *Nemaizer v. Baker*, 793 F.2d 58, 62-63 (2d Cir. 1986). The claims asserted in Herdocia II are precluded by the dismissal, with prejudice, of the allegations in Herdocia I.

For the reasons set forth above, the Union requests this Court to set a pre-motion conference for the Union’s intention to move for the dismissal of the Amended Complaint pursuant to Rule 12(b)(6) FRCP.

Respectfully submitted,

O’CONNOR & MANGAN, P.C.


J. Warren Mangan

JWM/woc

cc: John Ray, Esq.- via email
Keith R. Thorell, Esq. - via email
Anjanette Cabrera, Esq. - via email